

Summary of SC92401, 801 Skinker Boulevard Corporation, et al. v. Director of Revenue
Petition for review from the administrative hearing commission, Commissioner Nimrod T. Chapel

Argued and submitted Nov. 28, 2012; opinion issued Jan. 8, 2013, and modified on the Court's own motion Feb. 26, 2013

Attorneys: The taxpayers were represented by Ira M. Berkowitz and Marvin J. Nodiff of the Law Office of Marvin J. Nodiff PC in St. Louis, (314) 727-8989; and the director was represented by Deputy Solicitor General Jeremiah J. Morgan of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Taxpayers seek review of a decision denying their request for a refund of sales tax paid on the purchase of utilities for use in a condominium building's units, common areas and facilities. In a 7-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri reverses the decision and directs the director of revenue to refund the sales tax paid, plus interest, and directs the parties to statutory procedures for consideration of any award of attorneys fees. The plain language of the statutory exemption for sales of utilities for "domestic use" demonstrates the legislature's intent that utility service for common areas and facilities of a condominium building is for "domestic use" that is exempt from taxation, regardless of the type of meter through which it is purchased or the manner in which the utility classifies its rates.

Judge John J. Riley, a circuit judge in the 22nd circuit (St. Louis city), sat in this case by special designation to fill the then-vacancy on the Court.

Facts: 801 Skinker Boulevard Corp. owns and operates a 39-unit residential cooperative in St. Louis. It provides maintenance services to the units, common areas and facilities, the cost of which is paid by the cooperative members through assessments. From June 2006 through May 2009, the corporation purchased gas and electrical utilities that it used to provide heating, cooling, lighting, hot water and other services for the units, common areas and facilities including hallways, lobbies, elevators, entries, parking areas, generator and fire pump. The common areas are on separate meters from the individual units, each of which has a separate meter. While the corporation legally is required to pay for the common area gas and electricity, the members are responsible for the cost of such utilities in an amount consistent with their proportionate ownership share of the building. The corporation sought a refund for nearly \$12,000 it paid in 2008 in sales taxes for electric and natural gas utilities that it purchased from Ameren Missouri and Laclede Gas Company. In turn, and on 801 Skinker's behalf for taxes it paid in 2006, 2007 and 2009, Ameren sought a refund for about \$10,000 and Laclede sought a refund for about \$17,400. The director of revenue denied Ameren's and Laclede's refund applications. Ameren, Laclede and 801 Skinker filed a complaint with the administrative hearing commission, alleging the utilities were purchased for domestic use by the individual owners and residents of the cooperative in accordance with section 144.032.2, RSMo. The commission denied their request for a sales tax refund, interest, attorney's fees and costs. They appeal.

REVERSED WITH DIRECTIONS.

Court en banc holds: The commission's decision that 801 Skinker is not entitled to a refund is based on an incorrect reading of the statute. Section 144.032.2(23) authorizes an exemption from sales tax for sales of utilities for "domestic use," which it defines as that portion of metered utility service that an individual occupant of a residential premise uses for nonbusiness, noncommercial or nonindustrial purposes. The definition specifically provides: "Utility service through a single or master meter for residential apartments or condominiums, including service for common areas and facilities and vacant units, shall be deemed to be for domestic use." The word "or" ordinarily is used as a disjunctive to mean "either," as "either this or that." By its plain language, then, the statute shows the legislature's intent that utility service for common areas and facilities of a condominium building is for "domestic use" that is exempt from taxation, regardless of whether it is purchased through a "single" meter associated with each unit and area or a "master" meter for the whole building. Accordingly, the language does not support the commission's interpretation that 801 Skinker only qualified for the exemption under section 144.032.2(23) if utilities and gas were purchased by apartments or condominiums, servicing all individual living units as well as common areas and facilities, through only one meter for the whole complex. Further, the fact that the rate classifications were designated as "commercial" is not definitive, because the language the legislature used explicitly exempts the sale and purchase of utilities for common areas, facilities and vacant units in apartment and condominium complexes, regardless of whether the seller classified it as "residential" or "commercial." The only required result of the seller classifying the rate as "commercial" is that section 144.030.2(23)(b) requires the utility to charge a sales tax, which does not affect the purchaser's ability to apply for and receive a refund from the "domestic use" exemption. 801 Skinker is entitled to a credit for or refund of the taxes it paid on the domestic use portion of its utility purchases. The commission's decision is reversed, and the director is ordered to remit a full refund of the sales tax paid, plus interest at a rate of 6 percent per annum. The parties are directed to the procedures under sections 136.315.3 and 536.087.3, RSMo, for consideration of any award of attorney fees in this case.